

**OPINION
76-164**

March 18, 1976 (OPINION)

Mr. Edward J. Klecker
Director of Institutions
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Klecker:

This is in reply to your letter of March 12, 1976, relative to residents of the Grafton State School. You state the following facts and questions:

"Based on prior legislation, Grafton State School collected as a creditor, for cost of care, from the estates of responsible relatives. However, as recorded in Chapter 245, Volume 1 of the 1975 North Dakota Session Laws, the legislature amended several provisions of the North Dakota Century Code related to cost of care particularly Chapter 25-09.

The contention is being made that having removed the liability of cost of care of residents from responsible relatives in 25-09-04 of the North Dakota Century Code, without providing a savings clause, that the effect of the legislative change is retroactive and thus past accumulated cost of care debts cannot be collected from responsible relatives.

Grafton State School has taken the position that the amendment of 25-09-04 is prospective and that the cost of care accumulated prior to July 1, 1975, under previous provisions can be collected. Such legislative intent was manifest, they maintain in the fact that the schools' appropriations anticipate revenue from such collections. Further it is felt by Grafton State School that Chapter 1-02 of the North Dakota Century Code provides that legislative amendments are not to operate retrospectively and that they do not cancel existing liabilities nor impair valid obligations and that only in legislation which repeals a law will a savings clause be required to retain a portion of the repealed law, and that mere amendments do not fall into such a requirement.

If the amendments to the cost of care liabilities could not be collected from responsible relatives, then logic would dictate that all responsible relatives who have in good faith paid their obligations must now be reimbursed. Such a requirement would be administratively impossible and it seems difficult to think that such was legislative intent.

To resolve the impasse, I hereby request your formal legal opinion on the matter. Your prompt attention will be appreciated for administrative and budget consequences will require our immediate attention."

Without detailing the exact amendments to the statutes we understand

the effect of Chapter 245 of the 1975 Session Laws to be, for the purposes herein, twofold; the Legislature made care for patients at the State School the obligation of the State up to the age of twenty-one; secondly, the Legislature limited the obligation for care to persons over the age of twenty-one to that person or his estate and eliminated the responsibility of relatives for the cost of such care. The bill did not affect the responsibility for patients at the State Hospital. Prior to this enactment responsible relatives were not required to pay such costs for children upon such children reaching their eighteenth birthday in regard to indebtedness incurred from and after July 1, 1971. See section 25-09-04, as amended in 1973 (Chapter 230, 1973 SL) and prior to its amendment in 1975. In 1971 the Legislature had amended the provision to provide that in no event should responsible relatives be required to pay such costs for children upon reaching their twenty-first birthday. See Chapter 275, 1971 SL. The 1973 amendment was specific in stating it applied to indebtedness incurred from and after July 1, 1971. The 1971 amendment was not so specific, however. This office on September 28, 1971, in a letter to Donald C. Holand, State Senator, Fargo, North Dakota, and in a letter dated June 12, 1972, to Clinton R. Ottmar, Attorney for the Jamestown State Hospital, indicated these provisions were not retroactive and did not serve to extinguish claims of responsible relatives for expenses incurred by patients prior to July 1, 1971. The same rationale would appear applicable in this instance. However, we believe the Legislature in its 1975 legislation did enact a savings clause. Section 1 of Chapter 245 of the 1975 Session Laws amended section 24-05-04 of the N.D.C.C. The amendment to subsection 3 of that section reads as follows:

"On and after July 1, 1975, care and treatment at the state school shall be provided without charge to anyone under twenty-one years of age who is qualified for admission pursuant to this chapter. On and after July 1, 1975, persons over twenty-one years of age who are qualified for admission pursuant to this chapter shall be responsible for expenses incurred through care and treatment at the state school in the manner provided by chapter 25-09."

We believe this statement by the Legislature is indicative that the amendments which followed in Chapter 245 of the 1975 SL applied only after July 1, 1975, and for expenses incurred prior to that date the law in effect at the time such expenses were incurred would apply. We thus construe this provision to be an express savings clause and do not believe it is necessary to consider whether the amendments were intended to operate retrospectively.

In summary, we conclude the responsible relatives are responsible for the cost of care from residents of the Grafton State School prior to July 1, 1975, in accordance with the provisions of the law in effect prior thereto.

Sincerely yours,

ALLEN I. OLSON

Attorney General